

Award No. 2790

Docket No. 2580

2-WP-CM-'58

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 117, RAILWAY EMPLOYES'  
DEPARTMENT, AFL-CIO (Carmen)**

**WESTERN PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. The current agreement, particularly Rule 7, paragraph (e), was violated when F. E. Vice, carman, Elko, Nevada, was denied the double time rate of pay for service performed November 5, 1955 from 7 A.M. to 3 P.M.

2. Accordingly, the carrier should compensate Mr. Vice to the amount of four additional hours.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. F. E. Vice has a regular assignment of 3 P.M. to 11 P.M. in the Elko train yard.

On November 4, 1955 he worked his regular assignment. At 11 P.M. this date he continued to work until 3 A.M. the morning of November 5, 1955. After an elapsed time of four hours he was called back to work at 7 A.M. He worked until 3 P.M. and from then on through his regularly assigned hours until 11 P.M.

Mr. Vice was denied double time for any part of the hours worked between 7 A.M. to 3 P.M. November 5, 1955.

**POSITION OF EMPLOYEES:** Rule 7, paragraph (e) is controlling and reads as follows: "All overtime beyond sixteen (16) hours, computed from the starting time of the employees' regular shift, shall be paid for at the rate of double time."

The rule is clear as written. It simply means that ANY work performed sixteen hours after the starting time of the employe's regular shift entitles the employe to the double time rate of pay for his services.

overtime **BEYOND sixteen hours**, from the starting time of the employees' regular shift, pays double time. No stipulation or language in the rule mentions that ANY service or work has to be performed for the employee to receive the double time rate of pay. It just stipulates that **ALL** overtime in the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth hour, computed as stated, pays the double time rate of pay."

In adopting the above position the organization not only flies squarely in the face of the contrary practice on this property, but also argues counter to the generally accepted proposition that overtime payments are **made for service performed in excess** of a stated number of hours. That is, overtime rules in general provide that if an employe works in excess of eight hours per day, he receives time and one-half pay for those excess hours. Rule 6, quoted in carrier's statement of facts, is a rule of this nature. Rule 7(e) carries this proposition one logical step farther and provides for double time pay for the hours **worked in excess** of sixteen. The concept that the organization here puts forward to the effect that any work performed by an employe during the seventeenth through twenty-fourth hours after the start of his shift is payable at the double time rate even though he may not have worked at all during the first sixteen hours is completely contrary to the whole idea of overtime payments.

In conclusion, carrier asserts that it has shown the instant claim to be wholly without merit and therefore urges your Board to deny it in its entirety.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The claimant, F. E. Vice, began work on November 4, 1955 at his regular starting time, 3:00 P.M. After working as usual, he doubled over until 3:00 A.M., November 5. He was off duty from 3:00 A.M. to 7:00 A.M., when he returned to work and stayed on duty straight through, sixteen (16) hours, until 11:00 P.M. For all this service he received a total of thirty-eight (38) hours' pay. He now claims four (4) additional hours based on his contention that the employer violated Rule 7(e) by not paying double time for all the hours between 7:00 A.M. and 3:00 P.M., November 5. The pay he received for those eight (8) hours was at time and one-half rate.

Rule 7, Overtime Outside Bulletined Hours, Sub-section (e) states:

"All overtime beyond sixteen (16) hours, computed from the starting time of the employes' regular shift, shall be paid for at the rate of double time."

The carrier takes the position that an employe does not qualify for double time payment unless he has performed sixteen (16) hours **continuous** service beginning with the starting time of his regular shift.

The organization contends that any work performed sixteen (16) hours after the starting time of the employe's regular shift entitles him to be paid double time.

Neither proposition is entirely correct. The word "continuous" is not in the rule, and to uphold the carrier's contention would write the word in. Neither does the rule anticipate and make provision for proper payment where there is a break in service. To hold with the organization that any work during the period from the sixteenth to the twenty-fourth hour would do violence to the common and generally accepted understanding that a man's first eight (8) hours are on straight time, his next eight (8) hours are at time and one-half and that "all overtime beyond sixteen (16) hours \* \* \* shall be paid \* \* \* double time."

He was improperly paid only time and one-half (6 hours) for the second four (4) hours of his return (November 5, 11:00 A.M. to 3:00 P.M.), for which he should have been paid at double time (8 hours). The net result is a shortage of two (2) hours.

#### AWARD

The claim is sustained. F. E. Vice shall be paid two (2) additional hours on the basis hereinabove set out.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.

#### CONCURRING OPINION OF LABOR MEMBERS TO AWARD NO. 2790

We concur with that part of the award sustaining the claim but find in reality that the claim is not sustained as the claimant is only being compensated for half of the time claimed. There is no basis in the agreement for the reasoning set forth in the instant findings nor for the conclusion reached that the claimant is only entitled to two additional hours—which would compensate the claimant for four hours at double time. Since all the time claimed was for overtime beyond sixteen (16) hours computed from the starting time of the employe's regular shift, 3 P.M. November 4, 1955, he should have been compensated for all time claimed, 7 A.M. to 3 P.M. November 5, 1955 (8 hours) at the rate of double time as prescribed in Rule 7(e):

"All overtime beyond sixteen (16) hours, computed from the starting time of the employes' regular shift, shall be paid for at the rate of double time."

R. W. Blake  
Charles E. Goodlin  
T. E. Losey  
Edward W. Wiesner  
James B. Zink